85-480 (1)

Supreme Court, U.S.
FILED
AUG 28 1985
JOSEPH F. SPANIOL, JR.
CLERK

No._____

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1984

Jane Strode,	) Trial Court
Petitioner & Appellant	) Shasta Co. Ca.
vs	) #79596
Bill Gregory, Jim Gregory,	)
Gary Arel, Randall J.	) Appellant Court
Presleigh (deceased),	) 3rd District
Richard Abbe	) Sacramento, Ca.
Respondents-Appellees	) 3 Civil 23929

ON A WRIT OF CERTIORARI TO THE

SUPREME COURT OF CALIFORNIA

JURISDICTIONAL STATEMENT

Jane Strode
P.O.Box 667
Summit City, Ca. 96089
Appellant in Pro Per
916-275-8115

September 17, 1985

22 pp

QUESTIONS PRESENTED

1. Can the courts deprive a person of a jury trial in suits at common law according to Adm.VII of the U.S. Constitution?

2. May the respondents knowingly probate a fraudulant contract (revoked will) since Art.I Sec.10 Clause 1 of the U.S. Constitution says "no state shall pass any law impairing the obligations of contracts"? Court decisions in this case do impair a valid contract.

3. Can the court deprive a person of property without notifying that person of the scheduled hearing date according to the U.S. Constitution Adm.V & XIV?

   a) Does the probate court lose jurisdiction when an heir at law is not notified when a revoked will is probated and as a result receives nothing from a large fortune?

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No._____

in the

SUPREME COURT OF THE UNITED STATES
October Term, 1984

Jane Strode, Appellant
vs
Bill Gregory, Jim Gregory, Gary Arel,
Randall J. Presleigh (deceased)
Richard Abbe. Appellees

OPINIONS BELOW

Jane Strode, the appellant appeals from the final judgement of the Supreme Court of California entered on June 7,1985 and denied on July 31,1985 (pg.8) -and the final judgement of the Court of Appeal dated May 7, 1985 (pg.9-15) -and the final judgement of the Superior Court of Shasta County (pg.16-17) dated April 30th and 4th 1984.

JURISDICTIONAL STATEMENT

Anotice of appeal was duly filed in the Court of Appeal & the California Supreme Court on August 20,1985. This appeal is being sent within 90 days from the denial of the hearing below. Constitu-

tional Provisions & Federal Statutes are set forth in the Notice of Appeal (pg.6).

RAISING CONSTITUTIONAL QUESTIONS

The questions of a jury trial & fraudulant contract were brought up in all 3 courts. The questions about notification & jurisdiction were added in the Appeal & California Supreme Court.

STATEMENT OF THE CASE

In probating the estate of Jessie Thomas Gregory, appellant's father, attornies Presleigh & Arel (acting for Bill & Jim Gregory) agreed to grant Lorene D. Gregory (wife of deceased) a settlement out of her portion of the 1977 will. She would not have received anything from the 1966 will. The 1977 will is valid according to the Calif. Probate Code Art.3 Sec.350 which requires a copy (original was lost) & witnesses to the signing of the will. -All of this is in the file.- After probating the 1977 will the de-

fendants probated a 1966 will (appellant was not in it) without notifying appellant. A notice to a March 26,1982 hearing was dubbed in for the required notice of the August 16,1982 hearing in which the 1966 will was probated (pg18-19). So the defendants knowingly & with fradulant intent probated a revoked 1966 will --and Judge Richard Abbe signed it.

The following fraud was discovered before it was to close escrow & appellant hired ineffective bar counsel who filed a motion to Vacate the Void Probate. The appeals court denied this as being a non-appealable order. Appellant's counsel (lawyer) wanted to vacate the probate altogether & forget about the valid 1977 will. This procedure is not covered in the Probate Code Sec. 1240.

On Feb. 28, 1984 appellant acting as a pro per filed an action at Common Law for Trover & Conversion. The defendants

filed demurrers (according to Bovier's Law Dictionary a demurrer is "an allegation that , admitting the facts of the proceeding pleading to be true, as stated by the party making it, he has yet shown no cause why the party demurring should be compelled by the court to proceed further") which were sustained by Judge J.H. Redmon. The 3rd District Appeals Court affirmed the judgement in favor of defendants. The appeals court claims that appellant received "sufficient legal notice" when the revoked 1966 will was probated but no one produced any legal notices. Their written decision raises some pertinent questions: 1) How could Lorene D. Gregory receive her share of the estate when she was not in the 1966 revoked will? 2.How could appellant demand a jury trial for a probate hearing that she did not know about -namely the Aug.16,1982 hearing in which the revoked 1966 will was probated?

It is obvious that the jury trial was asked for on this Trover & Conversion case. The fact that appellant was not notified when defendants probated the revoked will was brought out at the hearing in Sacramento, California on April 19,1985 and appellant was not asked a single question about these matters although the attorneys bringing other cases on the same day were asked many questions.

REASONS FOR ALLOWANCE OF WRIT

1.Petitioner was deprived of a jury trial.

2.A revoked will was probated behind the back of appellant which involved fraud, perjury & embezzlement.

CONCLUSION

For the foregoing reasons it is respectfully submitted that this petition for a writ of certiorari should be granted. Done in faith, on the 17th day of Sept. in the year of our Lord 1985.

Jane Strode

Jane Strode

NOTICE OF APPEAL TO THE

SUPREME COURT OF THE UNITED STATES

Notice is hereby given that Jane Strode, the appellant herein, appeals to the Supreme Court of the United States from the final judgement of the California Supreme Court (see pg.3) entered on June 7,1985 and denied on July 31, 1985.

SUPREME COURT JURISDICTION

1.United States Constitution Art.VI Clause 2. This Constitution and the Laws of the United States which shall be made in pursuance thereof,.....shall be the supreme Law of the Land; and Judges in every State shall be bound thereby, anything in the Constitution or Laws of any State to the contrary notwithstanding.

2.United States Constitution Art.3 Sec.2 in which "the Supreme Court shall have appellant jurisdiction".

3.Pursuant to Title 28 of the United States Code 1257 (3) as a "right--- claimed under the Constitution"

JURAT

I, Jane Strode, after being sworn on oath say that I am the appellant herein, and the foregoing is true and correct.

Dated 19th day of August 1985.

Jane Strode

Jane Strode Plaintiff-Appellant

CLERK'S OFFICE, SUPREME COURT
4250 STATE BUILDING
SAN FRANCISCO, CALIFORNIA 94102

JUL 31 1985

I have this day filed Order

REVIEW DENIED

In re: 3 CIVIL *No.* 23929

JANE STRODE

vs.

BILL GREGORY, JIM GREGORY

ABBE

Respectfully,

Clerk

ORDER OF THE CALIFORNIA SUPREME COURT

CLERK'S OFFICE, SUPREME COURT

4250 STATE BUILDING

SAN FRANCISCO, CALIFORNIA 94102

JUL 31,1985

I have this day filed order REVIEW DENIED In re 3 Civ. No 23929 JANE STRODE vs BILL GREGORY, JIM GREGORY.

Respectfully,

Clerk

OPINION OF THE CALIFORNIA COURT

OF APPEALS

Not to be Published

In the Court of Appeal of the State of California in and for the Third Appellate District

Jane Strode, Plaintiff-Appellant,

vs. May 7,1985

Richard Abbe, et al. Defendants and Respondents.

3 Civ. 23929 (Super. Ct. No. 79596)

Plaintiff commenced this "Action at the Common Law for Trover and Conversion," alleging that her two brothers, Jim and Bill Gregory, their attorneys Gary Arel and Randall Presleigh, and the Honorable Richard Abbe, judge of the probate court, "have worked in concert to embezzle my father Jesse Thomas Gregory's Estate..... The defendants did without authority or basis in law, convert the will of Jesse Thomas Gregory, and probating (sic) an earlier will. This action on the part of

the defendants has resulted in the loss of Plaintiff's inheritance." The trial court sustained defendants' demurrers on the ground the action was barred by the doctrine of res judicata.

Plaintiff's sole contention on appeal is as follows: "The court erred in sustaining the respondent's demurrers. The at common law secured and protected by the 7th and 14th Amendments to the United States Constitution. The Respondents had not made any showing that the rights at issue had been determined by a jury."

As we conclude plaintiff's contention is without merit, we shall affirm the judgement entered in favor of defendants following the sustaining of their respective demurrers.

Jessie Thomas Gregory died on September 25, 1981 in Shasta County. His will, dated September 26, 1966, was admitted

to probate on August 16,1982, by the Superior Court for Shasta County. In its "Order For Probate and Judgement on Stipulation,' the court held, inter alia: "1. All notices required by law have been given...(1) 7. Lorene D. Gregory is the putative spouse of JESSIE THOMAS GREGORY, deceased." Based upon the attached stipulation of interested parties, the court also confirmed as Lorene D. Gregory's sole and separate property a quantum of real and personal property specified in the order.

The name of plaintiff, who is the natural daughter of Jessie Thomas Gregory, did not appear among the parties (including all defendants herein with the exception of defendant Abbe) who executed the stipulation, dated July 8, 1982. (Exh. D) Plaintiff was not present at the probate proceedings. Thereafter, on March 15,1983, plaintiff filed a motion

to set aside the probate proceedins on the ground that plaintiff, "as an heir at law was never duly notified before certain pending actions were decided by this Court which led to the filing of said Stipulated Judgement and subsequent action as required by law, all of which prevented her from being present and represented in each of such matters, and further... prevented her from being able to properly contest said alleged will admitted to probate under and by virtue of said Stipulation," (Exh.B) In ruling on the motion, the superior court stated, in relevant part, that plaintiff "was given 'sufficient notice' to fairly apprise her of her position in the proposed probate and to enable her to protect her interests, if any, in the estate," (Exh.A) Subsequently, this court denied plaintiff's petition for a writ of mandate overturning the trial court's ruling on the motion, (3 Civ.22976)

"The doctrine of res judicata precludes parties or their privies from relitigating a cause of action that has been finally determined by a court of competent jurisdiction. Any issue necessarily decided in such litigation is conclusively determined as to the parties or their privies if it is involved in a subsequent lawsuit on a different cause of action."(Bernhard v. Bank of America (1942) 19 Cal.2d 807, 810.) "The probate of a will is a proceeding in rem, Binding on all persons interested in the will who, being constructively notified to appear at the probate, might have come in, and who, had they come in, would have been heard for or against the will. (Citations.)" (Estate of Allen (1917) 176 Cal. 632, 633-634; see Code Civ. Proc.,* 1908, subd. (a) (1).)

Plaintiff's complaint herein may only be read as raising matters necessarily

litigated in Estate of Gregory. Therefore, this action amounts to a will contest initiated long after plaintiff lost the opportunity to oppose admission of the will to probate. As a party interested in the estate who received sufficient legal notice of the probate proceedings regarding her father's will (see Estate of Jessie Thomas Gregory, Shasta County Superior Court No.14813), plaintiff was bound by the result of such proceedings. The trial court correctly concluded this action was barred.

With regard to plaintiff's specific contention that she has been denied the right to a jury trial of her claim, we cannot discern whether she argues that such a deprivation occurred as to this action or as to the Estate of Gregory. In any event, we find no denial of her right to a jury trial. The question before the trial court on defendant's

demurrer, whether or not the pleading stated facts sufficient to constitute a cause of action, was one of law and hence not within the province of a jury. Furthermore, plaintiff's right, if any, to have a jury hear her claim as part of the Estate of Gregory was waived by virtue of her failure to contest the will in that proceeding. She cannot now resurrect her jury trial right since, as we have already concluded, she is precluded by res judicata from contesting the will by collateral attack.

The judgement is affirmed.

RYAN, J.*

We concur:

PUGLIA, P.J.

CARR, J.

---

*Assigned by the Chief Justice.

OPINION OF THE SHASTA COUNTY SUPERIOR COURT

April 4,1984 Judge J.H.Redmon

Jane Strode, Plaintiff, #79596

vs

Richard Abbe, et al., Defendants.

RULING RE DEMURRER

The demurrer of defendants, Bill Gregory and Jim Gregory, to plaintiff's Action at the Common Law for Trover and Conversion is sustained without leave to amend.

The demurrer of defendants, Gary Arel and Randall J. Presleigh, to plaintiff's Action at the Commom Law for Tr ver and Conversion is sustained without leave to amend.

In ruling on these demurrers, the Court has taken judicial notice of the Estate of Jessie Thomas Gregory, Shasta C ounty Superior Court Action No. 14813, and finds that this matter is res judicata.

cc:J. Strode, Weintraub etc. Brown, Presleigh etc. /s/ J.H. REDMON

OPINION OF THE SHASTA COUNTY SUPERIOR COURT

April 30,1984 Judge J.H. Redmon

Jane Strode, Plaintiff, #79596

vs. Filed May 1,1984

Richard Abbe, et al., Defendants.

RULING IN RE DEMURRER TO COMPLAINT

The demurrer of defendant Richard Abbe to the complaint is sustained without leave to amend.

cc: Jane Strode, 3200 Walker Mine Rd, Redding, Ca. 96003

Weintraub, Genshlea, Hardy, Erich & Brown, P.O. Box 1350, Redding, Ca 96099

Presleigh, Arel & Dunlap, P.O. Drawer AJ, Redding, Ca 96099

John Sullivan Kenny, County Counsel, 1558 West Street, Redding, Ca. 96001

/s/ J.H. REDMON

FRAUDULENT NOTICE TO HEARING

Law offices of

REESE & BANDELL

1330 West Street

Post Office Drawer 4847

Redding, Calif.98099

Attorneys for Respondent

Lorene D. Gregory

RECEIVED

FEB 10 1982

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SHASTA

Estate of

Jessie Thomas Gregory,

also known as Jess Thomas Gregory,

also known as Jess T. Gregory, also

known as J.T. Gregory

Deceased.

No.14813

FILED

JUL 3 1982

THE PEOPLE OF THE STATE OF CALIFORNIA,

TO FLORENCE JANE STRODE:

You are herby cited to appear in

the Superior Court of the State of California, in and for the County of Shasta, in department II, at the Shasta County Courthouse, 1500 Court Street, Redding, California, on March 26,1982, at 9:00 a,m. of that day, then and there to show cause, if any you have, why the CROSS CONTEST AND PETITION FOR LETTERS OF ADMINISTRATION filed herein by Lorine D. Gregory, should not be granted.

Dated: February 9, 1982.

RICHARD BRENNAN, Clerk
Shasta County Superior Court
/s/ Hazel Doss, deputy

Transcript of Case #14813 Pg.98